

Explanatory Memorandum to The Children (Secure Accommodation) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Children (Secure Accommodation) (Wales) Regulations 2015 and I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services
21 October 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (“the Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support and carers who need support in a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to integrate social services to support people of all ages, and support people as part of families and communities.

Section 119 of the Act deals with those occasions when a child who is being looked after by a local authority in Wales (or a local authority in England) needs to be placed in secure accommodation. Such a placement may only be made where the child has a history of absconding or is likely to abscond from any other type of accommodation and is likely to suffer significant harm if he or she absconds, or where the child is likely to injure himself or herself if kept in any other type of accommodation.

Section 119 (2) makes provision for regulations specifying maximum periods beyond which a child may not be kept in secure accommodation without the authority of the court, and specifying the maximum period for which the court may authorise a child to be kept in such accommodation; empowering the courts to authorise further periods in such accommodation; and providing that only local authorities may make such applications.

Section 119 (7) makes provision for regulations that specify any descriptions of children to which these provisions do not apply or apply with modifications, and other provisions which determine whether or not a child may be placed or kept in such accommodation.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background

The powers enabling these regulations to be made are contained within Part 6, section 119(2) and (7) of the Social Services and Well-being (Wales) Act 2014. They draw on powers in section 104(4)(c), paragraph 4(1) of Schedule 4, paragraph 7 of Schedule 5 and paragraph 10 of Schedule 6 to the Children Act 1989 in relation to the requirements on local authorities who place children in secure accommodation and section 22(8)(b) and section 118(7) of the Care Standards Act as regards the requirements imposed on persons who provide or manage secure accommodation settings.

This statutory instrument is subject to the affirmative procedure.

The regulations will come into force on 6 April 2016.

Current legislation

The existing powers to place or keep children in secure accommodation are contained in section 25 of the Children Act 1989. The relevant regulations are the Children (Secure Accommodation) Regulations 1991 ('the 1991 Regulations'), as amended (e.g. by The Children (Secure Accommodation) (Amendment) (Wales) Regulations 2006 and The Children (Secure Accommodation) (Amendment) (Wales) Regulations 2013).

The existing guidance is The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders (March 2008), chapter 5: Secure Accommodation Orders. This is statutory guidance issued under section 7 of the Local Authority Social Services Act 1970, and will be replaced by the code of practice under Part 6 of the 2014 Act.

Guidance on the placement of a child aged under 13 in a secure children's home was issued in December 2011 in the form of a letter to local authorities. This reminded LAs of the circumstances in which they needed prior Welsh Government approval, the procedures to be followed, and who to contact. This relates to regulation 4 of the 1991 regulations. This guidance will be replaced by the code of practice under Part 6 of the 2014 Act.

Proposed Legislation

The statutory framework will consist of three main elements: the Act itself, Regulations made under the Act, and codes of practice / statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The Act will ensure that all children who are looked after or accommodated by their local authority, including those placed in secure accommodation, receive (as a minimum) the same standards of care and support as they currently experience under the Children Act 1989. The Regulations made under Part 6 of the Act, and the code of practice relating to it will replicate the current framework, but will place this within the context of the new Act, with its emphasis on safeguarding and promoting the well-being of children and young people.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to impose requirements upon a local authority which is proposing to place a looked after child in secure accommodation under section 119. The Regulations also impose requirements on those who provide secure accommodation. The Regulations:

- set the maximum period which a local authority can hold a child in secure accommodation without authorisation from a court, and the procedural requirements the local authority must follow in relation to such arrangements
- impose restrictions on who may apply to a court for authorisation to hold a child in secure accommodation
- require local authorities to notify certain people when making such an application

- set the maximum periods which a court may authorise
- prevents a local authority from placing a child in secure accommodation anywhere other than a children's home registered for that purpose
- set out requirements for notification of such a placement
- set out the requirements on local authorities to make arrangements to review secure placements (including a requirement that the person reviewing a placement must make a recommendation to the local authority about whether the placement should continue)
- sets out the records which must be maintained in relation to secure placements
- requires local authorities to have the approval of the Welsh Ministers before placing a child under the age of 13 in secure accommodation
- identifies certain categories of children to whom section 119 of the Act does not apply, and identifies certain children in relation to whom the test for secure accommodation set out in section 119 is modified
- provides for persons other than local authorities who are looking after children to make applications to hold a child in secure accommodation, and for modification of the provisions of section 119 to fit such circumstances
- make consequential amendments so that the regulations made under section 25 of the Children Act 1989 no longer apply in relation to local authorities in Wales.

The intended effect of these Regulations is to set out a clear framework for placing looked after children in secure accommodation, putting safeguards in place to ensure that such placements are made in the best interests of the child, and that there are suitable checks and balances to ensure that no child is placed in such accommodation without due process.

5. Consultation

A 12 week consultation on these Regulations and a code of practice relating to Part 6 of the Act ran between 8 May and 31 July 2015. Chapter 6 of the draft code deals with looked after children in secure accommodation. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment considers the following:

1. the consequences of not making Regulations under section 119 of the Social Services and Well-being (Wales) Act 2014 – i.e. of doing nothing (**option 1**)
2. the impact of making Regulations under section 119 which retain the framework for secure placements set out in the Children (Secure Accommodation) Regulations 1991 (as amended) (**option 2**)

3. any changes which might need to be made to the existing framework and which could be brought into effect through these Regulations (**option 3**).

Option 1 – do nothing

The Children (Secure Accommodation) Regulations 1991 (and the amending Regulations made in 2006 and 2013) were made under Part 3 of the Children Act 1989, and will be repealed when the Social Services and Well-being (Wales) Act 2014 comes into force in April 2016. Doing nothing would mean that key elements of the existing legal framework for secure accommodation, specifically the safeguards contained in the 1991 Regulations (for example, the maximum periods for which a child may be kept in secure accommodation), will no longer be in place. Unless new Regulations are made, the legal and policy intention behind section 119 of the Act – to provide a regulatory framework for secure placements which safeguards and promotes the well-being of those looked after children whom local authorities are considering placing in secure accommodation – cannot be realised in full. In particular, there would be no specified maximum periods for which a child could be detained, no specified descriptions of children to which section 119 applies or does not apply, or applies with modifications.

Option 2 – making new Regulations which will remake the existing framework for placement of looked after children in secure accommodation

This is the preferred option. Under this option, the Regulations would remake the existing framework for placing looked after children in secure accommodation, but within the context of the Social Services and Well-being (Wales) Act 2014.

Option 3 – using these Regulations to make changes to the existing framework for secure accommodation

In preparing the draft Regulations and the code of practice relating to Part 6 of the Act, we ran a series of events for a wide range of stakeholders, to consider whether any changes were needed to the current framework for accommodating and maintaining looked after children, including those placed in secure accommodation. As we developed the draft Regulations and code, we convened a smaller group of key stakeholders to comment on the documents before they were issued for consultation.

The consultation on the draft Regulations and code of practice took place from 8 May to 31 July 2015. The consultation responses did not raise any substantial issues regarding children placed in secure accommodation by local authorities under section 119, and there were no suggestions about changing the legal framework

Costs

54 children were placed by Welsh local authorities in secure accommodation in the year up to 31 March 2015. The average number of days per child was 79 days. (Source: SSDA903 data collection)

There is little research into the costs of secure placements for looked after children. Research by Loughborough University into secure placements in England, published in 2012 ('Understanding the Market for Secure Children's Homes: Summary report – A

rapid response study for the Department for Education'), revealed mixed views among local authorities as to whether secure accommodation was more or less expensive than alternative provision, especially provision deemed semi-secure. However, semi-secure placements used by local authorities in the study were usually significantly less expensive than a secure children's home. (The published summary report does not include the financial details contained in the main report, for reasons of commercial confidentiality.) The secure children's home in Wales (Hillside Secure Children's Home in Neath) was excluded from the study, although local authorities in Wales also place children in secure children's homes in England.

The Welsh Government does not routinely collect unit costs for residential accommodation for looked after children, but Hillside Secure Children's Home reports that the weekly cost of a 'welfare' bed in Hillside is currently £5,250 (or £750 per day). By contrast, the PSSRU reports that the average unit costs of a children's home placement (including both secure and non-secure homes) is £2,995 per week. (See section 6.2 in Part I at <http://www.pssru.ac.uk/project-pages/unit-costs/2014/>.) This would appear to bear out the findings in the research above.

Option 1 – Do nothing

The Regulations are designed to ensure that the decision to place a child in secure accommodation is made subject to proper consideration and review, and that there are safeguards in place regarding timescales and procedures. Failure to make new Regulations would leave us with an incomplete framework for such placements, which may lead to children being placed inappropriately or for longer periods than are necessary, and therefore to increased costs.

Option 2 – making new Regulations which will remake the existing framework for placement of looked after children in secure accommodation

The new Regulations would ensure that there continues to be a comprehensive legal framework for placing looked after children in secure accommodation, with the necessary checks and balances in place. This framework ensures that such placements are only made where they are in the best interests of the child, and for no longer than necessary. This, in turn, ensures that resources are only expended on secure accommodation where they are necessary. As the new Regulations are essentially a re-making of the existing Regulations, they are unlikely to lead to additional costs for local authorities.

Option 3 – using these Regulations to make changes to the existing framework for secure accommodation

No changes to the existing framework are proposed. The consultation proposed no changes which require us to alter the draft Regulations, which simply re-iterate the provisions in the current Regulations. As we are not considering any changes, there are no cost implications to consider.

Benefits

Option 1 – Do nothing

There are no foreseeable benefits to this option. Doing nothing would result in an incomplete legal framework for placing looked after children in secure accommodation, without some of the necessary legal safeguards in place.

Option 2 – making new Regulations which will remake the existing framework for placement of looked after children in secure accommodation

Making these Regulations would ensure that there continues to be an effective framework in place for placements of looked after children in secure accommodation.

Option 3 – using these Regulations to make changes to the existing framework for secure accommodation

Stakeholders had the opportunity, as we were developing the draft Regulations and code of practice under the Act, and also during the formal consultation, to suggest any changes to the existing framework for secure accommodation that they thought would be beneficial. The only changes suggested were small-scale administrative changes, which have been reflected in the code of practice (for example, to the reporting arrangements for children under the age of 12, where ministerial approval is required). Otherwise, the feedback received suggests that the existing framework is still fit for purpose, and that no changes are needed. There would, therefore, be no benefits from using these Regulations to introduce any changes.

Consultation

A twelve week public consultation on these regulations and accompanying Code of Practice ran between 8 May and 31 July 2015. The documents can be found at: <http://gov.wales/consultations/healthsocialcare/part11/?status=closed&lang=en>

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up	No

costs for new or potential suppliers that existing suppliers do not have to meet?	
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

We have not identified any specific impacts on competition. The proposals in the Children (Secure Accommodation) (Wales) Regulations 2015, relate in the main to responsibilities of local authorities and do not effect the business sector in any significant way.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for the Welsh Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these Regulations.

The Welsh Government will continue to monitor the impact of the regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child and Older People and Equality.